In the Supreme Court

OF THE

United States

OCTOBER TERM, 1979

No. 79-624

ERNST RUSS STEAMSHIP CO.,
Petitioner,

vs.

JOHN MATTHEWS,
Respondent.

REPLY BRIEF AND SUPPLEMENTAL BRIEF OF PETITIONER IN SUPPORT OF PETITION

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Even under Respondent's recharacterization of the facts the question remains whether liability should have been determined under the standards announced in *Santos v. Scindia Steam Navigation Company*[1] and *Bachtel v. Mammoth Bulk Carriers, Ltd.*,[2] or under the standards generally applied in the vast majority of Court of Appeals decisions.

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[1]598 F.2d 480 (9th Cir. 1979) (Petition for Certiorari filed September 26, 1979, No. 79-512).

[2]605 F.2d 438 (9th Cir. 1979) (Petition for Certiorari filed October 1, 1979, No. 79-538).

Plaintiff's Response highlights the need for review of the use of a jury instruction on causation taken from Jones Act and Federal Employers' Liability Act cases. The Response correctly states that *Edmonds v. Compagnie Generale Transatlantique*, No. 78-479 (June 27, 1979), did not decide any causation issues. This is why we have objected to reliance on *Edmonds* by the Court of Appeals[3] to support overturning the general rule of causation. Moreover, *Edmonds* presumed the contrary, stating that "in accord with the common law" liability may be found when "the tortfeasor's negligence was a substantial factor in causing" the injury.[4]

The importance of review of the lower court's application of Jones Act and FELA principles to a longshoreman's injury case has been magnified by a subsequent similar misapplication in *Johnson v. A/S Ivarans Rederi*, No. 79-1118 (1st Cir., January 11, 1980). This Court has pointed out the special considerations which distinguish Jones Act and FELA cases: existence of the employer-employee relationship, and the lack of any workers' compensation system. *Kernan v. American Dredging Co.*, 355 U.S. 426, 431-32 (1958).

This case poses vital questions concerning the interpretation of a workers' compensation act, questions which the court below approached incorrectly and resolved contrary to prior expressions of this Court and holdings of many Courts of Appeals. The Petition for a Writ of Certiorari should be granted.

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[3]603 F.2d 676, 681; pp. A-9 & A-10 of the Petition.
[4]*Edmonds*, slip op. at 3.

Respectfully submitted,

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